

APPEAL NO. 020851
FILED MAY 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2002. With regard to the issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include degenerative disc disease of the lumbar spine. The claimant appeals, and the respondent (carrier) responds.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It is undisputed that the claimant sustained a compensable injury to the lumbar region of his spine. The issue before the hearing officer regarded the extent of the compensable injury. We have held that the question of extent of injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's resolution of the extent of the claimant's injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As far as the matter of jurisdiction raised by the dissenting opinion is concerned, we find the present case is distinguished from our opinion in Texas Workers' Compensation Commission Appeal No. 020928, decided May 29, 2002, in that the claimant's typed name appears at the bottom of the request for review in the present case while the dissent conjectures that the appeal was not filed by the claimant, we find the typewritten name sufficient indicia that the appeal in this case was filed by the claimant. See *also* Texas Workers' Compensation Commission Appeal No. 941740, decided February 6, 1995.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS BUILDERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. ROBERT SIDDONS
TEXAS BUILDERS INSURANCE COMPANY
11612 RM 2244, BUILDING 1
AUSTIN, TEXAS 78738.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

DISSENTING OPINION:

I cannot agree that a valid appeal has been filed in this case. An ombudsman is not and cannot be a representative or agent of a party, but may only "assist." The claimant remains the steward of his/her case. Section 410.252 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3) requiring "filing" of the appeal by "a party." Unlike an attorney, an ombudsman cannot stand in the shoes of the claimant and is not the equivalent of "the party."

In this case, there is no indicator of filing by the party, notwithstanding his typed-in name on the appeal. The certificate of service and cover letter to the Appeals Panel are signed by the ombudsman, it was mailed at Texas Workers' Compensation Commission expense from the local field office, it has not been signed by the claimant, and a copy of the appeal was mailed to the claimant by the ombudsman. Thus, it is not conjecture, but a matter of the totality of the documentation, that "the party" did not "file" this appeal. In Texas Workers' Compensation Commission Appeal No. 960876, decided June 11, 1996, we held that a similar document would not serve as a timely appeal. For this reason, I do not believe that our jurisdiction has been invoked.

Susan M. Kelley
Appeals Judge